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November 15, 2002  
DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

**Hearing Officer's Decision**

Name of Case: Personnel Security Hearing

Date of Filing: June 5, 2002

Case Number: VSO-0549

This Decision concerns the eligibility of XXXXXXXX (hereinafter referred to as "the individual") to be granted an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." A Department of Energy (DOE) Operations Office determined that reliable information it had received raised substantial doubt concerning the individual's eligibility for access authorization under the provisions of Part 710. The issue before me is whether, on the basis of the evidence and testimony in the record of this proceeding, the individual's access authorization should be granted. For the reasons stated below, I find that the individual's access authorization should not be granted.

**I. BACKGROUND**

The present proceeding arose after the personnel security division of the DOE Operations Office (local security office) received a report from the Office of Personnel Management (OPM), the agency that conducts background investigations of persons seeking access authorization. The OPM report revealed that the individual had been arrested a number of times, including one arrest for driving while intoxicated. The local security office conducted a personnel security interview (PSI) of the individual in order to resolve its concerns, inquiring into the circumstances surrounding the individual's arrests and his pattern of alcohol consumption. Unable to resolve those concerns at the PSI, the local security office arranged for the individual to meet with a DOE consultant psychiatrist. The DOE psychiatrist determined that the individual is a user of alcohol to excess, is alcohol dependent, and suffers from Substance Induced Mood Disorder. In addition, from inconsistencies between information that the individual provided to the DOE psychiatrist and information he had provided on his Questionnaire for National Security Positions (QNSP), the local security office determined that the individual had falsified information.

On the basis of that information, the DOE issued the individual a Notification Letter, in which it informed him of its specific security concerns regarding his eligibility for access authorization and set out his procedural rights, including his right to a hearing. The individual then filed a request for a hearing. This request was forwarded to the Office of Hearings and Appeals (OHA) and I was appointed as hearing officer. A hearing was held under 10 C.F.R. Part 710. At the hearing, the DOE called three witnesses: the DOE personnel security specialist who had interviewed him, the DOE psychiatrist, and the individual. The individual called two witnesses-- his alcohol abuse counselor and his wife-- and testified on his own behalf. The record of this proceeding was closed when I received a copy of the transcript of the hearing (Tr.).

## **II. STANDARD OF REVIEW**

The hearing officer's role in this proceeding is to evaluate the evidence presented by the agency and the individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). Part 710 generally provides that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest. Any doubt as to the individual’s access authorization eligibility shall be resolved in favor of the national security.” 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this decision: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the voluntariness of the individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

When reliable information reasonably tends to establish the validity and significance of substantially derogatory information or facts about an individual, a question is created as to the individual's eligibility for an access authorization. 10 C.F.R. § 710.9(a). The individual must then resolve that question by convincing the DOE that granting his access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). In the present case, reliable information has raised such a question, and the individual has not convinced me that granting his security clearance will not endanger the common defense and will clearly be in the national interest.

## **III. FINDINGS OF FACT**

The individual’s earliest arrest indicated in the record was for driving while intoxicated (DWI) in 1985. During the court hearing, the individual pleaded guilty to the charge, was fined, and was ordered to attend driver safety school. His most recent arrest was in 1999, when he was charged with

interfering with a police officer, after having consumed a number of beers over the course of the day. During the intervening years, in 1991, 1996, 1997 and 1998, the individual was arrested for domestic violence. He admitted that he had been drinking alcohol before many if not all of these arrests. Tr. at 12-15 (testimony of personnel security specialist) (*see also* individual's response to Item 23 of his 2001 Questionnaire for National Security Positions (QNSP), in which he lists all these arrests as "related to alcohol or drugs." DOE Exh. 8 at 13, 18).

According to the individual, he started drinking beer in relatively small amounts during high school. While he was in the military, his beer consumption increased to a six-pack per weekend, generally consumed on a single day. He continued drinking in that manner until the 1999 arrest, after which he maintains he slowed down to an average of two drinks per week, with a range of zero to four. DOE Exh. 7 at 45-50 (transcript of PSI). Nevertheless, in the week preceding his scheduled meeting with the DOE psychiatrist on February 1, 2002, the individual reported he had been on a drinking binge, consuming, by his own account, eight or more drinks (beers or shots of hard liquor) each day on four of those days and three or four drinks on the other days. He also stated that during the week before Christmas 2001, he "was drinking from a pint to a half-pint [of bourbon] every day," and after that week he abstained from alcohol for three weeks. DOE Exh. 5 at 18 (DOE psychiatrist's report). In response to the DOE psychiatrist's questioning, he stated that he had gone to work with a hangover about 30 times in the past year, and admitted to staying home from work because he was drinking or had a hangover. *Id.* at 19. When asked when the last time was that he had drunk to intoxication (by his own account, five drinks), the individual replied, "Last night." *Id.* at 18. To his credit, he stated that the last time he drove knowing his blood alcohol level was over the legal limit was three years ago. *Id.* Finally, the laboratory tests the DOE psychiatrist had performed were normal, except for significantly elevated liver enzymes, which the DOE psychiatrist interpreted to be "due to [the individual's] habitual and excessive use of alcohol." *Id.* at 23.

In the course of the evaluation, the individual told the DOE psychiatrist that he had been disciplined in the military as the result of a positive drug screen. According to the DOE psychiatrist's report, the individual informed him that while he was in the Navy, he had held an access authorization (referred to in this context as a security clearance) in order to perform as a member of a team that handled nuclear material. The DOE psychiatrist, who had reviewed documents the local security office had provided to him, pointed out to the individual that he had incorrectly responded in the negative to questions on the QNSP regarding whether he had ever held a security clearance in the past and whether he had ever illegally used a controlled substance while holding a security clearance. According to the DOE psychiatrist, the individual acknowledged that he had held a security clearance:

I asked him, "Did you have a security clearance in the Navy?" He said, "Yes, a Secret Clearance and a PRP." I asked him, "What is a PRP?" He said, "Personal Reliability Program."

*Id.* at 21-22.

On the basis of his review of the documents provided to him, his interview, and the laboratory tests, the DOE psychiatrist concluded that the individual actively suffers from alcohol dependence, as defined in the fourth edition of the Diagnostic and Statistical Manual of the American Psychiatric Association (DSM-IV). He also determined that the individual also suffers from Substance Induced Mood Disorder, as defined in the DSM-IV. This disorder manifests itself in the individual's aggressive behavior that occurs when the individual is intoxicated and had led to many if not all the arrests described above. Both disorders, in the opinion of the DOE psychiatrist, "may indicate a defect in judgment, reliability or stability," being conditions that are associated with questionable judgment and failure to control impulses. The DOE psychiatrist concluded that the individual currently drinks alcohol habitually to excess, that, as an alcohol dependent, the individual must abstain from alcohol, and that, since he was drinking excessively at the time of the evaluation, he was not showing adequate evidence of rehabilitation or reformation from his dependence. *Id.* at 24-28.

At the hearing, the individual presented testimony concerning his use of alcohol, and the counseling he has received for the conditions the DOE psychiatrist identified, in the six-month period that transpired between the DOE psychiatrist's evaluation and the hearing. The individual testified that he continued to drink after he met with the psychiatrist in February 2002, and even after he received a copy of the DOE psychiatrist's evaluation report roughly three months later. *Tr.* at 44. Since he received the report, he stated, he has restricted his drinking to two drinks no more than twice during the workweek, and three or four beers on Sundays. *Id.* at 45. He began attending an alcohol counseling program in late July 2000, about two months after he received the DOE psychologist's report and almost exactly one month before the date of the hearing. *Id.* at 46. Since he began the program, he has been abstinent. *Id.* When questioned how he arrived at his decision to stop drinking, he responded, "I don't know if it's one thing, but I'd say it's a combination of things, the report, my family life, my spiritual life. I've talked with my preacher, and it's something I need to address. That's what I'm doing." *Id.* at 48. He attends three and one-half hours of group meetings each week. *Id.* at 50. Although he believes it is necessary that he continue attending these meetings, he stated he did not know how long he would attend, for financial reasons. *Id.* at 51. He also stated his willingness to attend Alcoholics Anonymous (AA) meetings if he were counseled to do so. *Id.* at 85.

The individual also testified regarding the DOE's concern that he provided inconsistent information to the local security office regarding any access authorization he may have held in the past. He stated that he filled out the QNSP carefully and believed at the time that he was providing accurate information. He further stated that until the DOE psychiatrist started questioning him about his Navy experience, he did not realize that he must have held a clearance at that time:

I put down [on the QNSP] my Navy duty, and I wasn't thinking that I-- at that time that I had a clearance, like they clip a badge on you here. I didn't realize it. And I wasn't trying to hide anything. If I was trying to hide, I certainly wouldn't have brought it up. It was something that I got to say I overlooked. But at the time, I got to say I didn't realize that I had-- that I even had the clearance, number one. When

the doctor asked, he said, well, if you loaded weapons you must have had a clearance, is that right? And I said, yeah, I guess I must have. But the Navy didn't go through the process that I'm going through now or anything else. And I was a young man, and it didn't dawn on me until he asked me. . .

. . . .

Q [Hearing Officer]: . . . When you were in the Navy and they caught you smoking marijuana and you were pulled off that job, . . . they didn't say anything to you about, we're taking your clearance away, they just said, we're going to give you a different job?

A: No, I was still an aviation ordinance man. I still loaded missiles, high explosives, everything. I just wasn't on the nuclear load team. I took urine tests for months and everything. That's all they did, was remove me from the nuclear weapons load team.

*Id.* at 88-89. This exchange concluded with the individual stating, "They didn't say, we're giving you a clearance, or we're taking it away. I was never told that." *Id.* at 91.

The individual's wife's testimony supported his own. She confirmed that the individual stopped drinking altogether in late July, and has maintained his abstinence even when faced with social situations in which alcohol was present. *Id.* at 79. She believes he stopped drinking because he chose to do so, and believes that he will not start drinking again due to his mature approach to this problem. *Id.* at 76, 80. Because he has matured and mellowed over the years, as has their relationship, she no longer feels that he will subject her to domestic abuse in the future; she also pointed out that the abuse had always been verbal, not physical. *Id.* at 77-79. Finally, her testimony makes it quite clear that she intends to support him strenuously in his effort to abstain from alcohol use. *Id.* at 80.

The individual's alcohol abuse counselor also testified. He diagnosed the individual initially as alcohol dependent. *Id.* at 55. He described the treatment plan he developed for the individual on the basis of that diagnosis. He stated that the individual has followed the plan rigorously, attending all scheduled sessions, and participating fully. *Id.* at 57-58, 73. He stated that he has no reason to believe that the individual is currently drinking alcohol, nor has he other concerns about the individual's progress. *Id.* at 58-59, 63. He was, however, unwilling to give a detailed progress report on the individual because he was only one month into treatment. *Id.* at 63. Because of the brevity of the treatment, the counselor was also unwilling to express an opinion as to the individual's prognosis:

. . . I'm just not comfortable with making a comment on anybody's prognosis short-term [or] long-term with 28 days of treatment, with this long history of alcohol-related charges, with family history, the fact that I haven't seen any evidence of AA yet. I just don't— you know, I'm not comfortable to say yes to that question, I guess.

*Id.* at 72.

The DOE psychiatrist heard this testimony and was asked to comment on its effect on the conclusions he reached in his now six-month-old evaluation report. He stated his opinion that the individual was now showing evidence of rehabilitation, through his treatment program, as well as reformation, through his abstinence. He expressed the opinion that the treatment program he is pursuing is appropriate to his needs. Nevertheless, he concluded that such evidence was not adequate, because only a month had passed since he embarked upon his present course of treatment and abstinence. *Id.* at 99-100.

#### IV. ANALYSIS

In the Notification Letter the local security office states that it had received information that indicated that the individual “is a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist as alcohol dependent.” *See* 10 C.F.R. § 710.8(j) (Criterion J). The factual basis for this concern was the contents of the report that the DOE psychiatrist issued concerning his interview, testing and evaluation of the individual at the request of the local security office. In that report, the DOE psychiatrist stated that the individual was still consuming alcohol, and there was no evidence at that time of rehabilitation or reformation from his alcohol dependence. The DOE psychiatrist also expressed his professional opinion in that report that the individual suffered from two illnesses or mental conditions that cause “or may cause a significant defect in his judgment or reliability.” *See* 10 C.F.R. § 710.8(h) (Criterion H). He identified these conditions as Substance Dependence, Alcohol (alcohol dependence) and Substance Induced Mood Disorder. The personnel security specialist testified that the DOE’s security concerns that arise when an individual suffers from substance dependence or mental illness or condition are that he harbors an increased risk of mishandling classified information due to his impaired judgment. *Id.* at 18-19.

Since there is reliable, derogatory information that creates a substantial doubt concerning the individual's eligibility for access authorization, I need only consider below whether the individual has made a showing of mitigating facts and circumstances sufficient to overcome the DOE's security concerns under Criteria J and H. Because the hearing officer may recommend that an individual’s access authorization be granted only if it “will not endanger the common defense and security and will be clearly consistent with the national interest,” 10 C.F.R. § 710.27(d), the individual must provide convincing evidence mitigating those security concerns. The individual has not disputed the DOE psychiatrist’s opinion as it was presented in the report. The sole issue, then, is whether, in the six months between the evaluation and the hearing, the individual has achieved adequate rehabilitation or reformation that mitigates the local security office’s concerns. The DOE psychiatrist set forth in his report his opinion as to what the individual must do to achieve adequate rehabilitation or reformation: two years of abstinence, provided it is accompanied by 100 hours of AA meetings or 50 hours of a substance abuse treatment program, or three years of abstinence unaccompanied by any rehabilitation program. DOE Exh. 5 at 27. I do not find the DOE psychiatrist’s opinion to be inappropriate in light of the individual’s history, and given the fact that the individual has not brought forth any competing evidence. In fact, the alcohol counselor presently

treating the individual was unwilling to express any opinion contrary to that of the DOE psychiatrist on the basis of his short relationship with the individual. Tr. at 72. With regard to the diagnosis of Substance Induced Mood Disorder, the DOE psychiatrist has stated that the condition will “go away as soon as he stops drinking because it only manifests when he drinks.” *Id.* at 31. At this juncture, however, the opinion of both mental health professionals is that far too little time has transpired since the individual began his course of treatment and abstinence to be relatively assured that he has achieved permanent abstinence. After considering all the evidence in the record, I cannot find that the individual is rehabilitated or reformed from his alcohol dependence at this time. Consequently, the individual has not mitigated the DOE’s security concerns under Criterion J regarding his history of alcohol dependence. Moreover, because the individual has not demonstrated that the risk of relapse to excessive alcohol consumption is acceptably low, he had not mitigated the DOE’s security concerns under Criterion H.

The local security office identified the individual’s history of arrests as another area of concern. Aside from one DWI arrest, the arrests concern violent behavior. Many if not all of the arrests followed upon episodes of heavy drinking. In the Notification Letter, the local security office determined that these arrests constituted information that the individual “has engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest, reliable, or trustworthy; or which furnishes reason to believe that he may be subject to pressure, coercion, exploitation or duress which may cause him to act contrary to the best interests of the national security.” *See* 10 C.F.R. § 710.8(l) (Criterion L). The personnel security specialist explained at the hearing that DOE’s security concern is that the arrests are evidence of violent behavior, which constitutes “unusual conduct,” and could subject him to pressure or coercion. Tr. at 19. My concern about these arrests is that they demonstrate a lack of judgment and control that reflects poorly on the individual’s reliability and trustworthiness in stressful situations. The individual testified that he has learned to avoid situations that might lead to violence, and to avoid making bad choices. *Id.* at 93. I note that the most recent of the recorded arrests took place more than three years ago. That fact, combined with the testimony of the individual’s wife that the individual is now handling domestic issues more maturely, is evidence that he may be less likely to act in such a manner that will cause him to get arrested for violent conduct. This evidence mitigates the expressed security concern to some degree. On the other hand, most if not all of the arrests involved alcohol consumption. If I were convinced that the risk of the individual relapsing into alcohol dependence were very low, I would find this Criterion L concern adequately mitigated. However, I determined above that the individual has been pursuing his laudable goal of abstinence and treatment for too little time for me to assess that risk in his favor. As a result, I cannot conclude that the individual has mitigated the DOE’s security concerns under Criterion L.

Finally, the local security office also stated in its Notification Letter that it had obtained information that indicates that the individual “has deliberately misrepresented, falsified, or omitted significant information from a Questionnaire for National Security Positions, . . . that is relevant to a determination regarding eligibility for DOE access authorization.” Such behavior by an individual falls within 10 C.F.R. § 710.8(f) (Criterion F). A security concern arises under this criterion from the inconsistency, described above, between the individual’s admission to the DOE psychiatrist that

he had held a security clearance in the Navy (and that it had been revoked) and his earlier failure to report that information on his QNSP. The personnel security specialist summed up the DOE's concerns under Criterion F when she stated, "If you're dishonest, the DOE does not know whether they can trust you in the future." Tr. at 19. I completely agree with the personnel security specialist. In this case, however, testimony heard at the hearing casts some doubt on whether the individual acted deliberately, and therefore dishonestly, when he failed to report his earlier security clearance on the QNSP. After hearing the individual's explanation, I am convinced that he was not aware that he had in fact held a security clearance in the Navy, until he discussed it with the DOE psychiatrist, which occurred after he submitted his QNSP. I am particularly swayed by the individual's argument that, if he had intended to hide the fact that he had held a prior security clearance, he would not have discussed his duties in the Navy. Moreover, it does not strike me as unlikely that an enlisted man might not be fully informed that he was being processed for access authorization. Under these circumstances, I find that the individual was not acting dishonestly when he completed his QNSP. Consequently, the individual has mitigated the DOE's security concern under Criterion F.

## **V. CONCLUSION**

For the reasons set forth above, I conclude that the individual has not presented evidence that warrants granting his access authorization. Although the individual has resolved the DOE's national security concerns under Criterion F, he has not resolved the DOE's concerns under Criteria H, J, and L. He has not demonstrated that granting his security clearance will not endanger the common defense and will be clearly consistent with the national interest. Therefore, the individual's access authorization should not be granted.

William M. Schwartz  
Hearing Officer  
Office of Hearings and Appeals

Date: November 15, 2002